

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JAMIE NOLEN,

Movant,

v.

Civ. No. 1:13-cv-01343-JDB-egb
Cr. No. 1:13-cr-10018-JDB-7

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING § 2255 MOTION,
DENYING CERTIFICATE OF APPEALABILITY,
CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH,
AND
DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Movant, Jamie Nolen, filed a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. (§ 2255 Mo., ECF No. 1.) Respondent filed a response to the motion on May 28, 2015. (Resp., ECF No. 8.)

On June 13, 2017, the Court ordered Movant to show cause within twenty-one (21) days why the case should not be dismissed for his failure to notify the Court of his change of address and for lack of prosecution. (Order, ECF No. 9.) Although warned that failure to comply with the order would result in dismissal of his § 2255 motion under Federal Rule of Civil Procedure 41(b), Nolen did not respond to the Court's order and the time for doing so has passed.

Accordingly, the § 2255 motion is DISMISSED for Movant's failure to comply with the Court's order and for want of prosecution. Judgment shall be entered for Respondent.

APPEAL ISSUES

A § 2255 movant may not proceed on appeal unless a district or circuit judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA may issue only if the movant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2) & (3). A “substantial showing” is made when the movant demonstrates that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. Daniel*, 529 U.S. 473, 484 (2000)).

In this case, reasonable jurists would not debate the correctness of the Court’s decision to dismiss the § 2255 motion for want of prosecution. Because any appeal by Movant does not deserve attention, the Court DENIES a certificate of appealability.

Pursuant to Federal Rule of Appellate Procedure 24(a), a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. *Id.*

In this case, for the same reasons it denies a COA, the Court CERTIFIES, pursuant to Rule 24(a), that any appeal in this matter would not be taken in good faith. Leave to appeal *in forma pauperis* is therefore DENIED.

IT IS SO ORDERED this 6th day of July 2017.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE